



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

MEMO ENDORSED

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>8/25/08</u>

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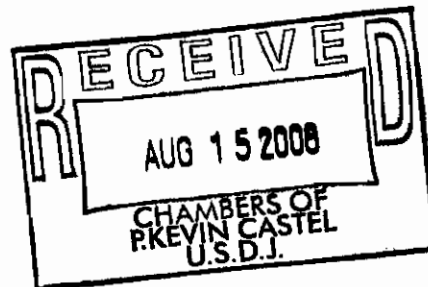
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August 15, 2008

By Facsimile

Hon. P. Kevin Castel
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Rm 2260
New York, New York 10007



Re: Joseph v. Fischer, et al., 08-CV-2824 (PKC)(AJP)

Your Honor:

I am an Assistant Attorney General in the Office of Andrew M. Cuomo, Attorney General of the State of New York, counsel for the served defendants in the captioned matter. I write, respectfully, for permission to file a partial motion to dismiss the complaint without the need for a pre-motion conference.

On July 17, 2008, a Rule 16 conference was held before Magistrate Peck at which time the Magistrate extended defendants' time to respond to the complaint until August 18, 2008. Defendants have decided to answer for some of the defendants and to move to dismiss as to others. Specifically, defendants wish to move to dismiss the complaint against Commissioner Brian Fischer and Superintendent James Conway on the ground of lack of personal involvement and as to Officer Carmen Cooper on the ground that plaintiff has failed to state a claim as to her. In the alternative, as to Superintendent Conway, defendants wish to sever and transfer all claims related to Attica Correctional Facility, located in Wyoming County, to the United States District Court for the Western District of New York

Following the July 17, 2008, conference, it was my mistaken belief that Magistrate Peck, would be the one to review defendants' partial motion to dismiss. Magistrate Peck does not require a pre-trial conference prior to making dispositive motions. However, after reviewing the March 27, 2008 Order of Reference to a Magistrate Judge, it became clear that Your Honor will review defendants' partial motion to dismiss.

Defendants respectfully request that Your Honor's requirement for a pre-motion conference be waived and that defendants be allowed to file their partial motion to dismiss on August 18, 2008. In the alternative, defendants respectfully request a pre-motion conference and an extension of their time to partially move to dismiss until a date following the conference

Thank you.

Respectfully submitted,

Neil Shevlin

Neil Shevlin

Assistant Attorney General

cc: Magistrate Peck (by facsimile)
Rodney Joseph (by first class mail)

*The pre-motion conference is waived provided
the motion is filed after the close of discovery (9/15/08).
Time to answer is extended to 9/15/08.
Application Granted.*

So Ordered:

[Signature]
Hon. P. Kevin Castel, U.S.D.J.

J-25-08